

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to administrative disqualification hearing and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 7, “Appeals and Hearings,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 217.6 and 7 CFR 273.16(f).

Purpose and Summary

Federal regulations give states the option of establishing procedures to allow individuals accused of an intentional Food Assistance Program violation to waive their right to an administrative disqualification hearing. With the recommendation of the USDA Food and Nutrition Service (FNS), the Department has decided to take advantage of this option.

The Department is responsible for investigating any case of alleged intentional program violation. The Department will notify a food assistance household when a member of that household has been charged with intentionally violating Food Assistance Program rules. Currently, the Department’s only options to ensure appropriate cases are acted upon are through an administrative disqualification hearing or through criminal prosecution by a court of an appropriate jurisdiction.

The proposed amendments give household members who are suspected of an intentional program violation an opportunity to waive their right to an administrative disqualification hearing if they so choose. Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, has been developed for this purpose.

If the household member chooses to sign the form, the member will be disqualified from participating in the Food Assistance Program for a specified time and agrees to repay any overpayment associated with the violation. No administrative disqualification hearing will be held. The same disqualification penalty will be imposed if the individual chooses to give up the administrative disqualification hearing and signs the waiver form or if the individual participates in the hearing and is found guilty by an administrative law judge.

No further administrative appeal procedure exists after an individual waives the individual’s right to an administrative disqualification hearing and a disqualification penalty has been imposed.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: policyanalysis@dhs.state.ia.us.

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** paragraph **7.8(6)“f”**:

f. An individual has waived the individual’s right to an administrative disqualification hearing, agreed to repay any overpayment and agreed to be disqualified from the food assistance program for the period specified by signing and returning Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing.

ITEM 2. Amend paragraph **7.10(3)“b”** as follows:

b. The appeals of those appellants who are denied a hearing shall not be closed until issuance of a letter to the appellant and the appellant’s representative, advising of the denial of hearing and the basis upon which that denial is made. Any appellant ~~that~~ who disagrees with a denial of hearing may present additional information relative to the reason for denial and request reconsideration by the appeals section or a hearing over the denial within 30 calendar days of the date on the denial letter.

ITEM 3. Amend subrule 7.16(9) as follows:

7.16(9) Opportunity for oral presentation of appeal of the proposed decision. In cases where there is an appeal of a proposed decision, each party shall be afforded an opportunity to present oral arguments with the consent of the director. Any party wishing oral argument shall specifically request it. When oral argument is granted, all parties shall be notified of the time and place.

ITEM 4. Amend paragraph **7.16(10)“a”** as follows:

a. A final decision on the appeal shall be issued within the following time frames:

- (1) Appeals for all programs, except food assistance and intentional program violations, shall be rendered within 90 days from the date of the appeal.
- (2) Food assistance-only decisions shall be rendered within 60 days.

(3) PROMISE JOBS displacement grievance decisions shall be rendered within 90 days from the date the displacement grievance was filed with the PROMISE JOBS contractee.

(4) Intentional program violation decisions shall be rendered within 90 days of the date the individual is notified in writing that a hearing initiated by the department has been scheduled. If the hearing was postponed pursuant to paragraph 7.21(3) “b,” the 90-day period for notifying the individual of the final decision shall be extended for as many days as the hearing is postponed.

ITEM 5. Amend rule 441—7.21(17A) as follows:

441—7.21(17A) Food assistance hearings and appeals.

7.21(1) and **7.21(2)** No change.

7.21(3) *Waiver of right to an administrative disqualification hearing.* Individuals accused of an intentional program violation may waive their right to a food assistance administrative disqualification hearing.

a. When a case is referred for an administrative disqualification hearing, the appeals section shall advise the individual that the individual may waive the individual’s right to an administrative disqualification hearing by signing and returning Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing.

b. By signing the waiver, the individual gives up the right to an administrative disqualification hearing, agrees to repay any overpayment and agrees to be disqualified from the food assistance program for the period specified.

c. If the individual does not sign and return Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, within ten days of the date of the written notification, an administrative disqualification hearing shall be initiated.

d. Even after the administrative disqualification hearing is scheduled, the individual may sign and return Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, prior to or during the administrative disqualification hearing. The presiding officer shall dismiss the administrative disqualification hearing since the individual has agreed to repay any overpayment and agreed to be disqualified from the food assistance program.

e. The signed waiver shall carry the same penalties as the penalties for an individual found guilty in an administrative disqualification hearing.

f. No further administrative appeal procedure exists after an individual waives the individual’s right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty shall not be changed by a subsequent fair hearing decision. The individual is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

~~7.21(3)~~ **7.21(4)** *Conduct of a food assistance administrative disqualification hearing.* Hearings over disqualification of a household member for an intentional program violation shall be conducted by a presiding officer.

a. to *c.* No change.

~~7.21(4)~~ **7.21(5)** *Consolidating hearings.* Appeal hearings and food assistance administrative disqualification hearings may be consolidated if the issues arise out of the same or related circumstances; and the household member has been provided with notice of the consolidation by the department of inspections and appeals.

a. and *b.* No change.

~~7.21(5)~~ **7.21(6)** *Attendance at hearing.* The household member shall be allowed ten days from the scheduled hearing to present reasons indicating good cause for not attending the hearing.

a. to *c.* No change.

d. When good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice, the household member has 30 days after the date of the proposed decision to claim good cause for failure to appear.

e. “Good cause” for purposes of this rule is defined as an emergency circumstance that is beyond the control of the party and that prevents the party from being able to participate in the hearing.

- (1) Examples of good cause include, but are not limited to:
1. Sudden, severe illness or accident involving the party or the party's immediate family (spouse, partner, children, parents, sibling).
 2. Death or serious illness in the party's immediate family.
 3. Other circumstances evidencing an emergency situation which was beyond the party's control and was not reasonably foreseeable.

(2) Examples of circumstances that do not constitute good cause include, but are not limited to:

1. A lost or misplaced notice of hearing.
2. Confusion as to the date and time for the hearing.
3. Failure to follow the directions on the notice of hearing.
4. Oversleeping.
5. Other acts demonstrating a lack of due care by the party.

~~7.21(6)~~ **7.21(7)** *Food assistance administrative disqualification hearing decisions.* The presiding officer shall base the determination of an intentional program violation on clear and convincing evidence that demonstrates the person committed, and intended to commit, an intentional program violation.

a. No change.

b. The appeals section shall notify the household member and the local office of the final decision within 90 days of the date the household member is notified in writing that the hearing has been scheduled. If the hearing was postponed pursuant to ~~subrule 7.21(3), paragraph "b,"~~ 7.21(4) "b," the ~~90 days~~ 90-day period for notifying the household member of the final decision shall be extended for as many days as the hearing is postponed.

c. to e. No change.